The regulation of academic employment: The past and present

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In order to appreciate the changes (and potential for further change) being brought about by industry deregulation and enterprise bargaining within higher education, it is necessary to put these changes into a historical perspective. This article seeks to briefly provide such a perspective. The first part of the article provides a rather sketchy history of industrial regulation prior to the 1980s, which was a period of transformation. The second part of the article focuses on the transformation in the 1980s and isolates the main features which changed in that decade and the forces behind those changes.

The history

If I have to identify the major characteristics of industrial regulation of academia prior to the 1980s I would say that it was ad hoc institutional autonomy. From the mid nineteenth century when universities in Australia were first founded, university statutes regarding employment of academic staff reflected a policy of non-regulation, except to deal with ad hoc institutional whims or crises. No institution of which I am aware ever had an overall policy or plan to codify academic terms and conditions of employment into its statutes. The University of Melbourne was typical in this respect and a good illustration, in that even today it has no specific provision entitling members of academic staff to sick leave. This is a remarkable fact given that almost every other group of 'workers' in our society has a legal right to paid sick leave - a right which is derived either from public sector statutes or industrial awards.

This policy of non-regulation had widespread support from both academic unions and university administrators. Support from the latter was hardly surprising given that most of them came from academic ranks. The cosy, collegiate relationships, custom and practice which fostered academic 'autonomy' and 'freedom' and the legal uncertainty of non-regulation of academic employment had its advantages. It created an impenetrable barrier for bureaucratic managerialism whenever it may have (rarely) reared its head. There were no well-trodden legal paths for academic managers to follow when seeking, for instance, to dismiss staff or direct them to perform certain duties (the duties being often impossible to define in a legal sense).

Generally, academic employment was primarily regulated by the contract of employment in a legal sense (with some ad hoc supplementation by university statutes), and by custom and practice in an industrial relations sense. There was considerable resistance within academic circles to industrialism and traditional unionism. Many academics thought - and some still do - that defining employment rights in industrial awards would either downgrade professionalism or adversely affect existing privileges. The only exception to these generalisations was in the College of Advanced Education sector in the 1970s, within which there was a greater acceptance of legal regulation of terms and conditions of employment

This led to more comprehensive award regulation in that sector, usually by the vehicle of awards of state industrial tribunals. My own view is that the college sector was more open to award regulation for two reasons. Firstly, the colleges were new creations which were initially intended to be quite distinct from the universities; rather than copy university models, it was appropriate to utilise mainstream mechanisms for employment regulation. Secondly many of the colleges were formed out of teachers' colleges and many staff consisted of former teachers who readily accepted industrial regulation because the state teaching sector had always been subjected to quite detailed legal regulation of employment terms and conditions.

Looking back, and putting aside the college sector, two aspects of academic employment prior to the 1980s were regarded as areas appropriate for regulation.

Tenure

Although tenure for academic staff was quite a rigid custom throughout higher education prior to the 1980s, it often had little legal basis. By and large, only professors were initially given *de jure* tenure. For instance the first professors at The University of Sydney were given life tenure although a retiring age of 70 years of age was introduced in 1935. In many tertiary institutions termination of employment of lecturers and senior lecturers could be effected by the giving of six months notice on either side. Such a termination clause has been contained in The University of Sydney statutes since 1888 and formed part of The University of Melbourne statutes for many years. It may be, as I argued in my work *Public Employment Law* (Smith, 1987 pp 147-8), that such statutes are conditioned by an implied contractual term that notice of termination by an employer can only be given for cause, such as, gross misconduct. But if this argument is wrong, then subject to the effect of the provisions of the Australian Universities Academic Staff (Conditions of Employment) Award 1988, academic staff subject to such notice of termination provisions have no legal tenure of employment. However, some tertiary institutions such as The University of Adelaide and The University of Tasmania had real tenure - that is academic staff with continuing employment could only be dismissed for serious misconduct or an othetwise defined just eause. They could not have their employment terminated by the giving of notice

Academic tenure - whether it was *de facto* or *de jure* - was, however, the preserve of a male majority and the use of fixed term contracts for tutors - who were predominantly women - grew particularly in the 1970s. The institutional autonomy to which reference has already been made is reflected by the statistics on the use of short term contracts which show that some institutions used this device much more than others. (Barlow, 1989, p. 30 to 33).

Regardless of whether tenure was *de facto* or *de jure* and notwithstanding the strong tradition of tenure, there is ample historical evidence of academics being sacked or forced to resign - with some notorious dismissals or attempted dismissals of professors. Some early examples are given in an illuminating article by Bruce Williams (Williams, 1989). One concerned an attempt to dismiss a Professor Wood from The University of Sydney in 1902. According to Williams:

> *Despite his life appointment several attempts were made to dismiss Professor G.A. Wood during the Boer War. Wood, as a good Manchester Liberal, was very critical of the role of the British Government, helped to found the Anti-War League and became its Chairman. Wartime hysteria led to a demand for his dismissal on the grounds that as Civil Servants should take no active part in political gatherings neither should professors, who were paid from public funds. Although he was Challis Professor, and McCallum and Edgeworth David were giving strong support for British Government War Policies, Wood was publicly censured by the Senate in February 1902. Later in 1902 there were moves to dismiss him, and on two occasions before the end of the War Senate did not reject but deferred further action on him.*
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> *In* Happy Highways *Portus reported Woods' view that he was saved by McCallum's threat to resign if Wood were dismissed. The more likely explanation is a letter from Edmund Barton, ... as Prime Minister, Barton was on leave from the Senate and in his letter of May 2 he asked whether Wood had not 'the right of free speech on his side of the controversy?" And how, he asked further, could Senate justify taking action on Wood while holding its hands in the cases of 'our friends McCallum and David'?*(Williams 1989, p. 25)

Williams also cites the cases of two professors, Irvine and Brennan, who were sacked or forced to resign because of adultery. Both cases were in the 1920s and in the case of Professor Brennan, the Vice Chancellor informed the University Senate that Brennan had been 'guilty of the breach of sacredness of marriage [which] must affect the minds of our young people' (Williams 1989, 25).

Even more notorious was the sacking in the mid 1950s of Professor Orr by The University of Tasmania. Professor Orr was found to have seduced one of his students, the 'affair' having 'developed under the guise of the discussion of philosophical problems' (he was a Professor of Philosophy). According to Chief Justice Green of the Supreme Court of Tasmania, in a judgment upheld by the High Court of Australia:

> *Such conduct amounts to a complete repudiation of the duty which a Professor owes to his university. If it could be permitted it would have the most grave consequences for the university, would inflict a very real injury upon it, and would destroy its standing and influence in the eyes of the world.*
>
> *But I go further than this. Even if the plaintiff had not used his position to seduce Miss Kemp; even if all that had happened was that he and she had entered into a sexual relationship without any attempt on his part to influence her to that course, I still think the fact that he had intercourse with one of his own students would constitute misconduct, justifying his summary dismissal. It seems to me to be essential, if the integrity of the university is to be preserved, that a professor should maintain a detathed and dispassionate attitude towards his students. I am quite unable to understand how it could be thought that a professor could teach, examine, recommend for prizes and honours, or present as a fit and proper person to receive a degree, a student who has in her academic life been his mistress. If such a thing could be then the integrity of the university degrees would disappear. (Orr v The University of Tasmania* [1956] Tas. SR 155).

It is, however, perhaps of greater significance that the Orr case confirmed that academics are employees and not independent contractors. This was the key finding of the High Court of Australia on appeal from the decision of Chief Justice Green ((1957) 100 CLR 526). Thus, as employees, academics automatically owed to their employers duties which other employees owed, such as the duty to obey lawful and reasonable orders, the duty of good faith (to their employer). Intellectual property rights in an academic's work automatically passed also to the academic employers.

Pay and classifications

Another aspect of the *ad hoc* approach of tertiary institutions to the regulation of academic employment was in the area of academic nomenclature. There was a remarkable diversity of such nomenclature. For instance, there were assistant lecturers, demonstrators, tutors, senior tutors, principal tutors, assistant professors, associate professors, lecturers, senior lecturers, readers, and teaching fellows amongst others. Of course, many of these classifications simply reflected our British heritage.

Pay was also largely institutionally determined until the 1960s when a series of *ad hoc* (and federal government initiated) reviews of academic salaries eventually led to the establishment of the Academic Salaries Tribunal in 1974. But the real source of moves to establish uniform national salary scales was the section 96 (of the Australian Constitution) States' grants mechanism. Section 96 of the Constitution, which permits the Federal Government to make financial grants to the States on such conditions as it thinks fit, has been the major source of the explosion of federal government power since World War II. Universities were of course established under colonial legislation and later state legislation and in law are essentially creatures of state governments. Initially of course they were entirely funded by the State Governments but have come increasingly to be exclusively funded by the Commonwealth Government. In 1960 the Commonwealth provided additional funds to the states for expenditure on tertiary education on the condition that they accepted the recommendations of the 1960 Martin Committee on academic salaries (Gallagher, 1982). Not surprisingly the States and the universities accepted the additional funds with the strings attached. This was, however, the end of autonomy in wage fixing within the universities and was a crucial stage in the development of academic industrial relations. Ever since then, the States grants power has enabled ever-increasing centralism and bureaucratic control over academic employment. It also marked the end of control over their own destiny by academics and the growth of a mechanism which could be used to impose what I will call for the remainder of this article 'the new managerialism'[1].

The various Commonwealth reviews of academic salaries prior to 1974, and afterwards by the Academic Salaries Tribunal, dealt almost exclusivcly with salaries. The regulation of other conditions was still left largely to the institutions themselves - though there were minor incursions such as the introduction of guidelines on study leave by the Commonwealth Tertiary Education Commission in 1978. This absence of central regulation was highly unusual within Australian industrial relations - especially within the public sector. Indeed Professor Scott, the former Vice-Chancellor of La Trobe University, said in an earlier issue of this Review (Scott 1986, 29):

> *The University system in Australia is unique in that a large proportion of its employees, namely the academic staff have not until recently been subjected to any award.*

Scott suggested two reasons as to why this was so. First he said there is 'the collegiate nature of universities. Academic staff are both employees and managers' (at p. 29). Secondly he suggests there have been structural difficulties impeding conventional processes. He identifies three structural impediments: firstly the identity problem of staff associations in deciding whether they were professional organisations or trade unions; secondly the fact that universities have only recently become large complex organisations and there was not previously "an overwhelming need for awards and negotiations" and thirdly jnrisdictional impediments to participation within the federal system of industrial relations (which is discussed below).

But whatever the reasons for this historical non-regulation of academic employment the result has been that academics have been left dangerously exposed to the predatory instincts of the exponents of the new managerialism[2]. The common law/custom and practice foundation has had a very soft underbelly - offering little or no legal protection, or institutional protection, and providing nothing to offer by way of award entrenched productivity trade-offs which have characterised industrial relations in the late 1980s and in the early 1990s.

The 1980s.

In my opening remarks I referred to the transformation in academic industrial relations which occurred in the 1980s. The transformation has, of course, merely been part of the wider transformation of higher education which many observers have witnessed in the past decade (Karmel, 1991: AIRC, 1991, 6). Indeed, in November 1991, the Vice-Chancellor of the University of Melbourne, Professor Penington, stated:

Over the past four years the Australian university system has passed through a period of disruption and change unparalleled in its 140 year history. (1991,4).

Penington places the blame for this 'turmoil' on John Dawkins, and his accession in 1987 to the Ministry of Employment, Education and Training, and to the advent in 1987 of federal award regulation of industrial relations, in the same year.

When I began to research material for this article I started by looking through back issues of the *Australian Universities' Review* and its predecessor *Vestes*. What I found particularly striking was the paucity of articles on industrial relations published during the 1970s and the contrasting dominance of this topic in the 1980s. It should be said that I include within the term industrial relations, matters such as approaches to management of tertiary institutions, gender in employment, the academic labour market, performance appraisal, institutional industrial relations as well as the legal regulation of academic employment. But the dominance of the topic of industrial relations in *AUR* began long before 1987. Long before Dawkins and the advent of the Conciliation and Arbitration Commission into academic industrial relations, the literature abounded with the jargon - 'What academics think about regular reviews of performance', 'flexibility in the academic labour market', 'performance appraisal of university academics'. These phrases come from titles of articles published in *AUR* prior to 1987. It is apparent that the language of the market and of human resource management was beginning to creep into many aspects of university life by the end of the 1970s, and that the increasingly dominant ideology of managerialism has made inevitable the present trend towards industrialism and alienation amongst academics. The growth of managerialism has also been matched by a growing centralism of power and control of higher education which was accelerated by the Dawkins' era and industrial relations have quite simply become caught up in this process. But we can identify several factors which have facilitated the rapid changes in the regulation of academic employment in the 1980s.

Changes in industrial law

In 1983 the High Court of Australia handed down its celebrated *Social Welfare Union* case (1983) 153 CLR 297, and thereby enabled registration under federal industrial legislation of academic unions and academic employers. It also made possible, for the first time, federal award regulation of academic employment.

The fact of federal registration of academic unions (1986: FAUSA; 1987: UACA) could have been a merely neutral factor and initially was largely painted by them as a partly defensive tactic to ward off registration of potential rivals. The formation and registration of the former Australian Universities Industrial Association was also to some extent a defensive response to the registration of FAUSA and UACA. But federal award regulation has flowed rapidly from the registration of these industrial organisations. Why?

One obvious answer is that there had been an absence of significant state industrial regulation of academic employment. There was, in effect, a void just waiting to be filled. By contrast, there has been little movement on federal award regulation of the employment conditions of state school teachers - whose unions achieved federal registration shortly after academic unions. The reason is quite clearly that there was an established pattern of comprehensive state industrial regulation of state school teachers already in existence. Another reason for rapid federal award regulation of academic employment has been the aggressive attitude of academic employers (the AUIA and its successor the AHEIA) who have rightly seen federal award regulation as a window of opportunity for them. They could probably have resisted federal award regulation for much longer than they would care to admit. Federal award regulation has also been in the interests of federal officials of academic unions, especially FAUSA which had been decentralised into strong university-based branches. Federal award regulation diminishes the power of branch and local officials and increases the power of federal officials. This fact is true not just of academic unions but of unionism as a whole in Australia.

Amalgamation of tertiary institutions

The crumbling of the binary divide between the CAEs and the universities has given a certain logic to unifying and codifying academic terms and conditions of employment. A unifying code, for instance in areas such as long service leave, accrued annual leave and even in the area of superannuation, facilitates transfer of staff between institutions. Moreover, where CAEs and universities amalgamate there is a managerial imperative towards the creation of uniformity within institutions. Government policy of creating a unified national system also contributed to the creation of a uniform federal award code. In the 1987 Green Paper - *Higher Education A Policy Discussion Paper* it was stated:

> *It is time to consider a new approach to terms and conditions of employment for academic staff. Current differences in salary scales and other employment conditions between universities and CAEs are not consistent with the concept of a unified national system of higher education. ...*
>
> *There is considerable argument for academics to operate under one federal award. State awards have the potential to produce inconsistencies within the system, frustrate attempts to achieve national objectives and discourage mobility between institutions.* (Dawkins, 1987, 55 - 6)

The Dawkins' managerialism

Dawkins and the Canberra bureaucrats with their ethos of efficiency and effectiveness - the new managerialism incarnate - viewed collegiate decision making and academic tenure as impediments to their aims:

> *Committee systems have an important role to play in institutional management by advising on policy, but they should not function to dilute the management power of the chief executive or to restrict appropriate delegation to those who should have responsibility at other levels* (Dawkins, 1987, 51)[3]

The view that tenure and efficiency are inconsistent was not confined to Canberra. For instance Rao and Bostock stated in *AUR*:

> *At the very core of the claimed inefficiency of the higher education system lies the concept of tenure and the demands for its abolition are becoming ever more strident* (1988, 30).

Given the ad hoc legal regime for academic tenure across Australia it was logical to use the federal award mechanism to create a uniform national system of dismissal procedures. Thus the Green Paper stated:

> *Dismissal procedures together with relevant appeal processes are available in most institutions. These should be established and strengthened system-wide.* (Dawkins, 1987, 61)

Employer militancy, restructuring and efficiency principle and Commissioner Baird

The AUIA, led by Professor Penington, was quick to see the opportunities opened up by federal registrarion and by the restructuring and efficiency principle created by the then Conciliation and Arbitration Commission in its March 1987 National Wage Case. In essence, the restructuring and efficiency principle required productivity trade-offs by eliminating restrictive work and management practices from industrial awards. The difficulty for academic unions was that there were no existing federal awards and there were thus no inefficient practices embedded in awards to trade off. So while many unions simply gave up smokos or agreed to electronic funds transfer of salaries to get their '4% second tier increase', academics were required (though some academics disagree) to give up *de facto* and *de jure* tenure[4] and agreed to open ended discussions to establish award provisions for redundancy, termination of employment on grounds of ill health and staff assessment and appraisal. Indeed subsequent wage-fixing principles have forced academic unions to accept provisions on most of these matters and these provisions are contained in what is now called the *Australian Universities Academic Staff (Conditions and Employment) Award 1988.*

There is little doubt that another factor which contributed to the tactical defeat of the academic unions by the AUIA was the role played by Commissioner Baird. In 1988, as a result of the recommendations of the Hancock Committee of Inquiry (Hancock 1985), the Academic Salaries Tribunal was abolished by the *Industrial Relations (Consequential Provisions) Act 1988* and jurisdiction over academic salaries and conditions passed to the newly created Australian Industrial Relations Commission. Commissioner Baird was allocated responsibility for academic industrial relations. Baird had been a metal worker by trade and had become a research officer with the AMWSU before his appointment to the Commission. He had little knowledge of academic work and, I suspect, little sympathy for academics and their privileged conditions of employment and tenure. So it is hardly surprising that, for instance, the redundancy package which he awarded in 1989, while defensible according to industrial principles, contained benefits considerably less than the norm which had evolved previously for voluntary retrenchments within tertiary institutions. Baird also oversaw the negotiations over the 4% "second tier" referred to above.

Deregulation and higher education in the 1990s

Throughout the economy, the 1980s was a decade of deregulation and yet one of the paradoxes is that higher education moved in the opposite direction. This paradox was recently adverted to by Peter Karmel at a conference of the Australasian Institute of Tertiary Education Administrators held in Darwin in 1991. Karmel identified four distinct paradoxes:

- demands for responsiveness to national priorities versus deregulation of markets;
- direction of size and shape of unified national system from the top versus dismantling of command economies;
- largeness the criterion for membership of unified national system versus shift to smaller units in big business conglomerates;
- advocacy in the White Paper (Dawkins 1988) of firmer direction of universities by chief executives versus shift to flatter organisations, industrial democracy and risk management.

Thus in many respects the reforms within higher education through the 1980s have been moving against the tide of deregulation. Will this trend continue?

It is probable that the trend towards national regulation and codification of academic terms and conditions of employment will continue for the foreseeable future. The Australian Industrial Relations Commission (AIRC), academic unions and even academic employers are presently locked into a strategy of creating a national code of conditions. Indeed the Full Bench of the Commission in the most recent academic salaries decision stated that: "that task should receive a high priority now that the salary issue has, in substance, been resolved." (AIRC 1991, p. 6) Thus the 1990s will see codification in federal awards of matters such as promotion, probation, annual leave, sick leave, study leave, allowances, intellectual property rights and perhaps even working hours. Academic employers have adopted a strategy of seeking codification but with maximum flexibility. In particular they seek to eliminate state and institutional variations in regulation but desire flexibility in terms of managerial discretion.

It is also likely that we will see an increased use of performance and market loadings within academic salaries structures. The use of performance and market loadings has been facilitated by Commissioner Baird's declaration that academic salary awards are minimum awards rather than paid rates awards. One of the major issues yet to be confronted is the extent to which salary loadings should be based on individual merit or discipline shortages (within the labour market). (Baldry, 1991)

The extent to which changes will flow from the current enterprise bargaining principle, enunciated by the Australian Industrial Relations Commission in 1991, is dealt with elsewhere in this Review by Dr Blackford. But it is self-evident that without deregulation of funding of higher education very little can be achieved by way of genuine enterprise bargaining within the sector. The need for deregulation of higher education funding in order to bring about any real deregulation of academic employment has been widely recognised (Karmel 1991; Coalition 1991, 44-66). Indeed as Professor Penington said in his "leaked" letter[5] to the Shadow Minister for Education, Dr Kemp:

> *If funding of higher education institutions were no longer to be through centralised grants, but rather depended upon student awards and fee income, a far greater degree of employer responsibility in negotiation of salary outcomes should develop.*

If enterprise bargaining does develop to any significant extent within higher education it should lead to stronger workplace union organisation within universities (a reversal of the current trend, at least within FAUSA, towards centralisation of union organisation) and an increased role for job delegates within departments and operational units. If unions fail to meet the challenges and strengthen workplace organisation, then enterprise bargaining will undoubtedly increasingly become merely individual bargaining and ultimately may lead to the demise of academic unionism. Enterprise bargaining and deregulation of funding sources would also add significantly to pressures which already exist to apply private sector models of employment within higher education (O'Brien 1990; Niland et al, 1991).

What is clear is that the trauma and challenges wreaked by the transformations in the 1980s are a beginning rather than an end, a shaking off of historical vestiges, and that the cocoon of federal award regulation may be a short lived state of existence.

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Notes

1. For good critiques of the "new managerialism" - referred to in the literature as "corporate managerialism" - see Considine (1990) and Yeatman (1991)

2. Though it should be noted that Dr Blackford in his article in this issue takes a different view, referring to "stifling over-regulation and overly complex regulation of personnel practices".

3. The devastating consequences of a combination of the new managerialism and the Dawkins changes are described graphically by Yeatman (1991, 3):

> *Instead of there being a committee system of policy making, where the culture of decision-making is a collegial culture, and the Vice-Chancellor is first among equals, there has developed a centralised unit of executive authority which asserts its authority as that of an employer over the academic staff, now redefined as employees. How was this achieved? By making each higher education institution a self- managing budgetary unit, i.e. a unit which receives a fixed allocation from the government in relation to a quasi-performance contract where it is clear that the institution is responsible for adding to these resources through the commercialisation of its services where at all possible. Instead of the Vice-Chancellor acting as a channel and broker of claims from the collegial community of the university to Canberra for more resources in relation to a planning process and certain well-known resource formulae, the Vice-Chancellor becomes the Chief Executive Officer of a higher education commercial enterprise. His or her job is to develop a judicious mix of carrot and stick to get the employees of this enterprise to perform at an optimal level, not to bestow on them his collegial respect. The committee system is replaced by a system of centralised executive management combined with devolution of budgetary management to the School or Faculty level. This means that Deans of Schools/Faculties become the equivalent of a branch manager. Like any good branch manager, their role is to trouble-shoot the claims of employees and clients at that level, not to refer them upwards. Within the School or Faculty, the committee system is reshaped in relation to the increase of the Dean's power and management prerogative.*
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> *In general, there is a decrease in policy-oriented debate within the institution, an increase in self-regarding behaviour on the part of academics, and a more or less scrupulous commercialisation of academic services to anyone who will buy them, including of course full-fee foreign students. The professional pride, morality and ethic of academics is left to slowly drift away as an irrelevance and quaint anachronism.*

4. Though it is interesting to note that the AHEIA is less than pleased with the operation of the new dismissal procedures, concluding that they are "administratively difficult to implement, costly, open to abuse, and unnecessarily destabilising on other staff and students". *Industrial Update* Issue No 15, October 1991 pp 4-8 at 8.

5. See further Mr Shaw Q.C.'s article in this issue.

Enterprise bargaining and higher education: A changed role for the AHEIA?

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Introduction

The introduction of an enterprise bargaining principle into Australian wage fixation, as a result of the National Wage Case decision of 30 October 1991, is not likely to have a rapid effect on industrial relations processes in the higher education sector or a dramatic effect upon the sector's operations in 1992.[1] The nature of the Bench's decision makes me incline to this view more than when I originally planned to produce this paper - having regard to the constrained system of enterprise bargaining which has actually been introduced. In particular, I believe that changes to the role of the employer association representing higher education institutions, the Australian Higher Education Industrial Association (AHEIA), are likely to be modest for the foreseeable future. This is also likely to be true of academic and general staff unions operating in the sector, though not necessarily for identical reasons. Indeed, the approaches which I expect academic and general staff unions to take will constitute one of the main constraints on changes to the role of the employer association.[2]

The conclusions of this paper relate to the foreseeable future. I have not attempted to predict the situation which would arise if the Australian Industrial Relations Commission (AIRC) were, over a period of years, to develop a far less circumscribed regime of enterprise bargaining than that provided for in the October 1991 national wage principles; the same applies to the situation if an entirely different system of labour relations legislation were introduced by an incoming alternative government. It would be foolhardy to speculate in any detail about the implications of changes of either kind, though in either event, the role of central employer bodies could change considerably in providing more an advisory or consulting role and carrying out less "hands-on" negotiation with national union officials and representation of employers collectively in formal proceedings before the AIRC.

Even with such a scenario, the likely changes to the role of an employer body such as AHEIA should not be exaggerated. The area of work which might be expected to decline would be the national negotiation or arbitration of new entitlements. However, a large proportion of the work in which AHEIA officers are currently involved consists of providing advice on individual personnel decisions, handling or assisting in discipline matters, contesting the merits of unfair dismissal claims and handling disputes arising from the interpretation or application of awards, employment contracts and other instruments. This is, no doubt, the experience of any employer organization. In any imaginable future system of labour relations law, rights and quasi-rights' disputes will need to be handled through some formal mechanism or set of mechanisms, and employer associations are likely to provide a source of professional expertise in handling them. Such disputes already consume the time and resources of AHEIA more than do pure interests' disputes. A further change in this direction would not make a dramatic impact on the day to day operations of the AHEIA office, however, dramatic the changes to wage fixing practice or statutory regulation which brought it about might appear on paper.

My conclusions should not be taken as suggesting an unwillingness on the part of either the AHEIA office or the AHEIA membership to devolve responsibility for handling labour relations. On the contrary, the membership places the highest priority on a policy of maximum flexibility for individual institutions to handle such matters in their own way. For its part, the team of industrial advocates employed by AHEIA is relatively small - currently six officers - and has nothing like the resources of, say, a State or Commonwealth Public Service Commission. These staff have provided a resource for institutions requiring expert advice or assistance in handling sensitive personnel matters or rights/quasi-rights disputes. In handling national claims for improved conditions of service, their efforts have been largely devoted to achieving outcomes which will enhance, or at least diminish as little as possible, the autonomy of individual institutional decision-making.

The modesty of foreseeable changes to AHEIA's role stems from the fact that the role already relates very much to providing a resource for handling local matters, together with the major constraints on adopting any full-fledged regime of local bargaining in the higher education sector in the near future. These constraints arise from the current wage-fixation system and from aspects of the higher education system itself, conceived as an industry. To summarize some of these constraints:

- The enterprise bargaining principle introduces only a limited form of local bargaining based upon notions of "productivity".
- Enterprise agreements reached under the principle must be processed through and scrutinized by the AIRC.
- Enterprise bargains will, in practice, include one or more federally-registered unions as parties, giving the unions considerable power to frustrate bargaining if its outcomes run contrary to national union policy.
- The application of the concepts of a "single bargaining unit" and an "enterprise or section of an enterprise"[3] to higher education are unclear, and this will discourage bargaining.
- There is potential for the funding arrangements in higher education to discourage innovations which either require up-front investment or which are directed at improvements in quality without cutting expenditures.
- Questions must be raised about the extent to which the sector can deliver further improvements in measurable productivity in any event.
- Industrial regulation of the sector has reached a situation where it is still difficult to plan how enterprise bargaining will dovetail with the completion of other major changes in award conditions.
- The pace of change experienced by the higher education system in recent years has been such that the extent to which the system's resources and morale can absorb further dramatic change in the immediate future must always be kept under